

## Memo

17 April 2019

**To:** Helgard Wagener - Relationship Manager Great Barrier and Waiheke, Izzy Fordham - Chairperson Great Barrier Local Board, Luke Coles - Deputy Chairperson Great Barrier Local Board

**From:** Jacqui Fyers - Senior Local Board Great Barrier

**Subject:** Urgent decision request of the Aotea Great Barrier Local Board

### Purpose

The purpose of this memo is to initially seek the local board relationship manager's authorisation to commence the urgent decision-making process and if granted, seek formal approval from the chair and deputy chair (or any person acting in these roles) to use the process to make an urgent decision.

The decision required, and the supporting report, are attached to this memo. The urgent decision being sought needs to be authorised by the chair and deputy chair (or any person acting in these roles) by signing this memo. Both this memo and the report will be reported as an information item at the next business meeting if the urgent decision-making process proceeds.

### Reason for the urgency

There is an opportunity for Auckland Council to make a submission regarding the Department of Conservation's proposal to revoke certain Ministerial delegations which are currently made to territorial authorities under the Reserves Act 1977.

The case for an urgent decision is made due to the need for local board input into the Auckland Council submission to be made by 18 April 2019, in order for the submission to be approved by the Environment and Community Committee on 14 May 2019 and the feedback to meet the Department of Conservation deadline of 17 May 2019. The Great Barrier Local Board's next scheduled business meeting is Tuesday 21 May 2019.

Local boards have the opportunity to provide feedback on the draft Auckland Council submission, so that their views can be considered by staff drafting the submission. All formal local board feedback will also be appended to the final Auckland Council submission.

The proposal relates to core responsibilities of local board decision making under the Auckland Council shared governance model, and could have potentially far reaching time and cost implications.

The urgent decision will be reported to the full local board during the next scheduled meeting on Tuesday 21 May 2019.

### Decision sought from the chair and deputy chair (or any person acting in these roles) That the Great Barrier Local Board:

- a) approve the feedback, as contained in attachment B, on the Department of Conservation proposed revocation of certain delegations to Territorial Authorities under the Reserves Act 1977.
- b) note that the Aotea Great Barrier Local Board feedback will be attached verbatim to the Auckland Council submission which will be recommended to Environment and Community Committee for their approval on 14 May 2019 and sent to the Department of Conservation by the due date of 17 May 2019.

### Background

The Department of Conservation wrote to all territorial authorities on 14 March 2019 seeking feedback on a proposal to revoke most Ministerial powers currently delegated to councils under the Reserves Act 1977. Territorial authorities have exercised these powers since 2013.

The letter and associated table outlining the proposed changes are attached to this memo.

If the proposal were to proceed, it would mean most decisions regarding local reserves will require Minister of Conservation approval, in addition to the relevant decision made by the local board. These delegated "supervisory" Ministerial decisions currently sit with the Governing Body and have been sub-delegated to staff.

There are likely to be time delays on decisions as well as costs associated. Based on current timing and cost-recovery policies this could be of up to one year and \$3,000 per decision. It is assumed that there would also be a considerable increase in staffing resources required to process decisions for local parks under the Reserves Act 1977 throughout New Zealand.

#### **Attachments**

**Attachment A - Letter from Planning, Permissions and Land Direct, Department of Conservation, and table of proposed delegations for revocation**

**Attachment B - Great Barrier Local Board feedback**

**Authorisation of the urgent decision-making process**



Helgard Wagener  
Relationship Manager, Aotea Great Barrier Local Board

Date 11/04/2019

**Approval to use the urgent decision-making process**



Izzy Forrdham  
Chairperson, Aotea Great Barrier Local Board

Date 16.04.2019.



Luke Coles  
Deputy Chairperson, Aotea Great Barrier Local Board

Date 16/4/2019

**Aotea Great Barrier Local Board Resolution/s**

That the Aotea Great Barrier Local Board:

- a) approve the feedback, as contained in attachment 8 on the Department of Conservation proposed revocation of certain delegations to Territorial Authorities under the Reserves Act 1977.
- b) note that the Aotea Great Barrier Local Board feedback will be attached verbatim to the Auckland Council submission which will be recommended to Environment and Community Committee for their approval on 14 May 2019 and sent to the Department of Conservation by the due date of 17 May 2019.



Izzy Forrdham  
Chairperson, Aotea Great Barrier Local Board

Date 16.04.2019



Luke Coles  
Deputy Chairperson, Aotea Great Barrier Local Board

Date 16/4/2019

Ref: DOC 5730277

14 March 2019

Attn: Chief Executive  
All Territorial Authorities

Tēnā koe

**Subject: The revocation of certain delegations to Territorial Authorities under the Reserves Act 1977**

In June 2013, the Minister of Conservation delegated certain powers under the Reserves Act 1977 (the 2013 delegations) to Territorial Authorities. Over the past year or so there have been instances where Territorial Authorities have relied on the delegations to exercise the prior consent role of the Minister in circumstances where they have also made the initial decision to grant the instrument or activity applied for.

In a recent Court of Appeal decision, (*Opuā Coastal Preservation Inc v Far North District Council*)<sup>1</sup> the Court considered a delegation of the Minister’s prior consent role under s 48 of the Reserves Act 1977 to be “highly unusual”. The Court commented that it could be argued that it replaced a two-step process involving two separate decision makers (the Council and the Minister) with a single-step process and a single decision maker. The Court noted that the effect of the delegation was that the Council made both decisions contemplated by s 48(1)(f) of the Reserves Act and observed that “[I]t might be thought that in these circumstances any difference of view between the two decision makers is unlikely”. The Court did not rule on the legality of the delegation because the Appellant had not pursued the matter. Nevertheless, it seems that had the lawfulness of the delegation been in issue the Court would have ruled it to be unlawful.

In light of the above, we have undertaken a review of the 2013 delegations was undertaken, it would appear some are potentially unlawful and would put Councils in a position of conflict of interest, for example;

- a) Those where a Council makes its own decision and then acts under delegation to exercise the prior consent role of the Minister;
- b) Those where the Minister’s power to carry out certain actions has been delegated to Councils, including a requirement for the Minister to consult with a Council before exercising the power. In this situation, a Council would end up consulting with itself.

---

<sup>1</sup> *Opuā Coastal Preservation Incorporated v Far North District Council & Others* [2018] NZCA 262 20 July 2018.

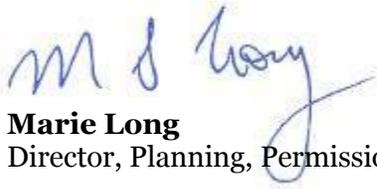
In view of the above, the Minister of Conservation is considering a proposal whether to revoke certain delegations and has requested that the Department seek your comments before the Minister makes a decision. Attachment 1 to this letter sets out the delegations proposed to be revoked and contains a column for you to insert your comments/views.

We also take this opportunity to invite you to identify any new delegation proposals that you believe would improve efficiencies for Councils and that you would like the Minister to consider. We ask that you use Attachment 2 for this purpose.

A table of the sections, the power delegated and the reasoning for the revocation is attached, along with a table for any new items you may want considered.

Please forward your responses no later than 26 April 2019 to Sheryll Johnson, [sjohnson@doc.govt.nz](mailto:sjohnson@doc.govt.nz). All comments will be collated and forwarded to the Minister for a final decision.

Nāku noa, nā

A handwritten signature in blue ink, appearing to read 'Marie Long', is positioned above the printed name and title.

**Marie Long**  
Director, Planning, Permissions and Land

**Aotea Great Barrier Local Board feedback on the proposal to revoke Ministerial delegations under the Reserves Act 1977**

Aotea Great Barrier Local Board supports the comprehensive submissions made by Auckland Council and Local Government New Zealand in opposing the revocation of certain delegations to Territorial Authorities under the Reserves Act 1977.

In our opinion, it is absolutely imperative that before any final decision is made by the Minister a robust conversation is had with all Territorial Authorities.